



ISLAM AND THE SANCTITY OF HUMAN LIFE

An analysis of contemporary deviant ideologies

FAISAL IBN QAZZAZ AL-JASIM

Islam and the Sanctity of Human Life

An analysis of contemporary deviant ideologies

Our Vision Statement

Together Working for Islam and Muslims

Visit Us On

www.bestrust.org.uk



BEST

British Education & Support Trust

UK REGISTERED CHARITY NUMBER 1014888

NOT FOR SALE

Copy right 2006

All rights reserved for author except for
free distribution without any modifications to
any part of the book.

7238

Foreword

With the Name of Allah, All-Merciful, Most Merciful.

The following short treatises by Faisal Al-Jasem, competently translated by our brother Abu Eesa Niamatullah, are important for the ongoing debate within the Muslim world, especially with regards to relations with non-Muslim nations and individuals.

The two treatises deal, in order, with the following important themes:

1. The sanctity of human life, which God has made sacred. In fact, the human spirit that God breathed into Adam, father of mankind, is so beloved to Him that He termed it "My Spirit" in the Blessed Qur'an. This is because the human being is potentially the best of God's creatures, selected to fulfil the highest purpose of creation, that of knowing, loving and worshipping the One and Only God, with all His Most Beautiful Names. Recognition of this sacred aspect of every human being is badly needed in a world of ever-increasing violence, war, terrorism (both individual and state-orchestrated). Human life has become so cheap that in the last century, literally tens of millions of innocent people have been senselessly massacred around the world, and to Allah we shall all return and answer for what we did.

2. The principles of justice, honesty and integrity in dealings with other people. This theme is especially prominent in Surah al-Ma'idah (The Tablespread), the fifth chapter of the Blessed Qur'an that begins with the command, "O people of faith: honour your pledges" and includes the golden commandment of behaving with justice even towards one's enemy, for "Justice is closest to God-consciousness."

We pray that Allah accepts and blesses the efforts of all who have participated in this work to spread goodness, light, justice and honour in the world.

Suhaib Hasan

26th Ramadan 1427 / 18th October 2006

London, United Kingdom

Islam and the Sanctity of Human Life

An analysis of contemporary deviant ideologies

By Faisal Qazar Al-Jasem

Edited translation by Abu Eesa Niamatullah

MANY MISGUIDED CALLS have been circulating in recent times calling for the killing of non-Muslims (*Kuffār*) wherever they are to be found, claiming that this is the Jihād described by the Prophet, *sallallāhu 'alayhi wa sallam*, in an authentic *Hadīth* as being the "uppermost and highest aspect of *Islām*".

What *Islām* requires from us is to judge and weigh any claim according to the Islamic *Sharī'ah* (law), using the *Qur'ān* and the authentic *Sunnah* as understood by our righteous predecessors. Moreover, one must bear in mind an important rule of the *Sharī'ah* that if one must choose between two alternatives, he must *always* choose the one that will bring the greatest benefit or cause the least harm. In addition any evaluation must be objectively conducted free from emotion.

Those who call to this particular type of Jihād claim that it will help Muslims and *Islām* to regain its eminence. When one thinks about our present situation, this claim could not be further from the truth. Indeed much of our present day suffering emanates from such logic.

Sahl bin Hanīf (*radhy Allāhu 'anhū*) said, "O people! Always doubt your opinions; for verily, during the incident of Abu Jandal, had I had the ability to disobey the Prophet, sallallāu 'alayhi wa sallam,, I would have done so."¹ Similarly, 'Umar ibn al-Khattāb (*radhy Allāhu 'anhū*) said, "O people! Do not rely on your opinions in matters of religion. I once almost disobeyed the Prophet, sallallāu 'alayhi wa sallam, and followed my own opinion; that was during the incident of Abu Jandal."²

This incident occurred when the Muslims had a treaty with the Quraysh (the chief tribe of Makkah) and one of its clauses being that any Muslim who escaped from Makkah and reached Madīnah be returned to Makkah. Abu Jandal was among those who were able to escape, and the Prophet, sallallāu 'alayhi wa sallam, abided by the terms of the treaty and returned him to the *Kuffār*.

It is intended that this essay will hopefully help to better grasp the correct understanding of the scholars of Islām concerning a few of the many rulings of Jihād that have caused so much tribulation in recent times.

1. Bukhārī

2. Tabarānī and Abu Ya'la

Jihād and Betrayal are Two Opposites

Jihād in the cause of Allah is the highest and uppermost aspect of Islām, as stated by the Prophet, sallallāu ‘alayhi wa sallam, Jihād is one of the tools required to spread the religion and thereby justice throughout the world. Since Jihād may involve the shedding of blood and the destruction of property, the *Shari’ah* detailed its rules and regulations with care. Neglecting these rules and guidelines will lead to the opposite of what is intended, driving the people away from Islām and preventing them from learning and embracing it.

Amongst the matters that the *Shari’ah* was careful to prohibit while conducting Jihād were treachery and betrayal. These are matters rejected and abhorred in Islām as they nullify the goals that Jihād seeks to achieve. We will now list some general proofs that command the Muslims to fulfill their contracts and treaties and not resort to betrayal and treachery, alongside other proofs that specifically deal with Jihād:

1. Buraydah (radhy Allāhu ‘anhū) narrated that whenever the Messenger of Allāh, sallallāu ‘alayhi wa sallam, appointed a leader of an army or brigade, he would especially exhort him to fear Allāh and to be good to the Muslims who were with him. He would say, ***“Fight in the name of Allāh and in the way of Allāh. Fight against those who disbelieve in Allāh. Go forth and fight, do not embezzle the spoils, do not break your pledge, do not mutilate (dead) bodies, and do not kill children. When you meet your enemies who are polytheists, invite them to three courses of action....***

When you lay siege to a fort and the besieged appeal to you for protection in the Name of Allāh and His Prophet, do not accord to them the guarantee of Allāh and His Prophet, but accord to them your own guarantee and the guarantee of your companions, for it is a lesser sin that the security given by you or your companions be disregarded than that

the security granted in the name of Allāh and His Prophet be violated. When you besiege a fort and the besieged ask you to let them out in accordance with Allāh's Command, do not let them come out in accordance with His Command, but do so at your own command, for you do not know whether or not you will be able to carry out Allāh's behest with regard to them."³

It is clear from this *Hadīth* that treachery and betrayal are prohibited even given the fact that the opponents are usually non-Muslims and/or those who spread mischief in the earth.

2. Huthayfah ibn al-Yamān (*radhy Allāhu 'anhū*) narrated, "Nothing prevented me from being present at the Battle of Badr except the following incident: I came out with my father Husail (to participate in the battle), but we were caught by the *Kuffār* (non-Muslims) of Quraysh. They asked, 'Do you intend to go to Mohammad (to fight on his side)?' We said, 'We do not intend to go to him, but we wish to go back to Madīnah.' So they took a covenant from us in the Name of Allāh that we would turn back to Madīnah and would not fight on the side of the Prophet. So, we came to the Messenger of Allāh, *sallallāu 'alayhi wa sallam*, (near Badr) and related the incident to him. He then said, '**Both of you proceed (to Madīnah), we will fulfill the covenant made with them, and seek Allāh's help against them.**'"⁴

This *Hadīth* confirms the obligation of fulfilling our covenants and treaties, and this was the only reason that prevented Huthayfah and his father from participating in the first battle between Islām and *Kufr*.

3. Muslim

4. Muslim

3. Abu Rāfi' (*radhy Allāhu 'anhū*) narrated, "The Quraysh had sent me as an envoy to the Prophet, sallallāu 'alayhi wa sallam, but when I saw him, Allāh immediately lead me to Islām, and I thus said to him, 'O Messenger of Allāh! I, by Allāh, have no wish to return to them (the Quraysh), ever.' The Prophet said to me, ***'By Allāh! I will never betray a treaty or with - hold an envoy (from returning back to his leader). Go back to your people and then if you still wish to embrace Islām, come back to us.***'¹¹⁵

4. Imām al-Bukhārī reported that the Prophet, sallallāu 'alayhi wa sallam, returned Abu Jandal to the *Kuffār* of Quraysh after he had escaped from them, because of the treaty between the Prophet and Quraysh which required the return of any escapee.

5. Imām Abu Dāwūd reported that al-Mughīrah ibn Shu'bah (*radhy Allāhu 'anhū*) once betrayed some of his *Kāfir* (non-Muslim) companions by killing them and looting their possessions. He then took the loot and went to the Prophet, sallallāu 'alayhi wa sallam, and embraced Islām. The Prophet, sallallāu 'alayhi wa sallam, said to him, ***"As for your embracing Islām, we accept this of you; but as for the loot, this is the product of a betrayal, and we have no need for it."***

This *Hadīth* clearly indicates the prohibition of betraying the *Kuffār* and looting their possessions even if the one who did this was a *Kāfir* who later embraced Islām, despite the fact that Islām erases sins which have previously been committed. Imām al-'Athīmabādi said in *'Awn Al-Ma'būd* in explanation, "This *Hadīth* clearly indicates that the possessions of the *Kuffār* are impermissible for one to take during a time of treaty or security. Their possessions are only lawful after legally fighting and defeating them (during war)."

5. Abu Dāwūd and Nasā'i.

The above texts and much more clearly indicate that betrayal and treachery are in total opposition to the ideals of Jihād. Imām Ahmad stated that if a Muslim army lays siege to a fort held by the *Kuffār* and a *Kāfir* is granted safety on the condition that he opens the gate of the fort and then it becomes unclear which *Kāfir* opened the gate, none of the *Kuffār* can be killed⁶; the concern being that the one who had opened the gate may be mistakenly and unlawfully killed.

Thus all of them are given security due to the one whom we have given immunity being ambiguous amongst them. The scholars differed over their enslavement in this case also, what is famous from Ahmad is that they cannot be enslaved either. All of this was done so that the covenant is honoured and to remain far removed from betrayal and treachery.

The Different Types of Disbeliever (*Kuffār*)

The *Kuffār* are basically of four types: the *Thimmi*, the *Mu'āhad*, the *Musta'man* and the *Harbi*. A brief explanation follows of these four types:

1. *Thimmi*: This is the *Kāfir* who permanently resides in a Muslim land on the condition that he pays the *Jizyah* (a specific governmental tax) and that he abides by Islamic laws. The *Thimmi* will be under the full care and protection of the Islamic state.

2. *Mu'āhad*: This is the *Kāfir* who is a resident of a *Kāfir* country with which the Islamic state has a covenant or treaty, whether temporary or permanent. An example of this is when the Prophet, sallallāu 'alayhi wa sallam, had a peace treaty with Quraysh stipulating that there would be no hostilities between them for a period of ten years. Therefore, during that time, the *Kuffār* of Quraysh were *Mu'āhadeen* (pl. for *Mu'āhad*). An example of this category in this day and age is when a country joins a world organization where the members commit themselves to not carrying out acts of aggression towards other member states for the duration of their membership. The land of such *Kuffār* will then be called *Dār al-'Ahd*, which literally means "the land of treaty."

3. *Musta'man*. This is the *Kāfir* fighter who enters a Muslim land with permission and safety offered to him by any Muslim residing in that land. An example of this type is Allāh's statement, **(And if anyone of the Mushrikin (idolaters) seeks your protection (to enter a Muslim land), then grant him protection, so that he may hear the Word of Allāh, and then escort him to where he can be secure.)**⁷

6. Ma'awnah of Imām al-Fatūhi in the chapter of Jihad and the section on immunity and safety.

7. Verse 6, at-Tawbah

Umm Hānī' bint Abi Tālib (*radhy Allāhu 'anhā*) granted safety to one of the *Kuffār*, and the Prophet, *sallallāu 'alayhi wa sallam*, said to her, ***"We will grant safety to whomever you granted safety."***⁸ A modern day example would be any form of official entry permission; an entry visa, card or entry stamp etc.

The three types of non-Muslim mentioned above cannot be harmed or harassed, and their lives and possessions are protected as long as their status does not change. This is shown by the saying of the Prophet, *sallallāu 'alayhi wa sallam*, ***"Whoever kills a Mu'āhad shall not smell the scent of Paradise, even though its scent is found from a distance of forty years travel."***⁹ The *Mu'āhad* mentioned in this *Hadīth* entails all three categories listed above. The Prophet, *sallallāu 'alayhi wa sallam*, also said, ***"The asylum granted by any Muslim is to be secured by all Muslims, even if it is granted by one of the lowest social status among them. Whoever betrays a Muslim in this respect will incur the curse of Allāh, the angels, and all the people; and his compulsory and voluntary good acts of worship will not be accepted from him (by Allāh)."***¹⁰ He also said, ***"No Muslim is to be killed for killing a Kāfir, and no Mu'āhad can be killed as long as he has an 'Ahd (an agreement)."***¹¹

Allah, Glory be to Him, the Most High, said regarding the *Kāfir* who has a *thimma* and is killed accidentally: ***(and if he belonged to a people with whom you have a treaty of mutual alliance, compensation (blood money - Diya) must be paid to his family, and a believing slave must be freed...)***¹²

8. Bukhārī and Muslim

9. Bukhārī

10. Tirmidhī and Abu Dāwūd. Classified as authentic by ibn Hibbān

11. Abu Dāwūd and Nasā'ī. Classified as authentic by Hākim

12. An-Nisaa: 92

If a *Kāfir* who has been granted security and is then killed accidentally deserves blood money to be paid and an expiation to be conducted then what is the case if he is killed deliberately?! The offense is more significant and the sin is greater. This is why Shaykh al-Islam held the position that a Muslim is killed for murdering (*ghaylatan*) – in a state of security by way of deception or treachery – a *Kāfir* who resides under the Islamic state (a *thimmi*), this is the position of *Imām Mālik*. *Abu Hanīfah* viewed that a Muslim is killed for killing a *Kāfir thimmi* in an absolute sense but not for killing a *Mustaman*.

The killer of a *thimmi*, *Muāhad* or *Mustaman* without justification is covered by every verse wherein there is the prohibition of taking a life without justification, like for instance His saying, the Most High: ***(nor kill such life as Allāh has forbidden, except for just cause...)***¹³

4. *Harbi*: This entails any *Kāfir* who is not a *Thimmi* or *Mu'āhad* or *Musta'man* and is the origin when it comes to the *Kuffār*. This includes both males and females, young and elderly. This does not necessarily mean that such a *Kāfir* is an enemy combatant and that between his state and the Muslim state there necessarily exists a state of war. Instead, this type of the *Kuffār* can be killed or enslaved if they enter Muslim land without being granted security. The exceptions to this are females, the young and the very old, for those can only be enslaved, not killed since they are booty for the Muslims. The country of such people is called '*Dār ul-Harb*' ('Land of War').

There are some important differences that exist between the *Musta'man* and the *Mu'āhad*, and we will only mention those that are relevant to our research.

13. Al-Furqan: 68

1. The *'Ahd* by which the *Kāfir* becomes a *Mu'āhad* can only be established by the ruler or his authorized deputy. As for *Amān*, by which the *Kāfir* becomes *Musta'man*, this can be granted by individual Muslims. The *Ummah* has reached consensus on the validity of the *Amān* of a free adult Muslim. As for the *Amān* granted by a young Muslim, Imām Ahmad and Imām Mālik allowed it, whereas Imām Abu Hanīfah and Imām ash-Shāfi'ī disallowed it. As for the slave, the scholars all agree on the correctness of his *Amān* providing that his master had given him permission to fight. As for the slave who was not granted permission to fight, the majority of scholars accepted his *Amān*, among them Mālik, Ahmad and ash-Shāfi'ī, while Abu Hanīfah had disallowed it in this case.

2. The *Mu'āhad* is safe for the duration of the *'Ahd* wherever he may be, whether he is in our country (i.e. *Dār ul-Islām*) or in his own country, or any country for that matter. Also, he does not need a new *'Ahd* in order to enter our country. Thus Abu Sufyān entered Madīnah during the treaty secure due to the covenant without generating a new pact of security.

As for the *Musta'man*, he is only safe for the duration of the *Amān* that was granted to him and only in our country. Whenever he departs our country and reaches a safe area, then from that point on he is no longer a *Musta'man*.

There are other differences between the three contracts which I have mentioned in the treatise *'ar-Rad al-'Ilmi 'ala Nashrat la 'Ahd wa la Aman ya 'Ulama as-Sultan'*.

The Muslim in *Dār ul-Harb*

If a Muslim enters the *Kuffār* lands and *Dār ul-Harb* with *Amān* and official permission such as an entry visa or entry stamp etc, then it is not permissible for him to harm them in any manner or to betray their *Amān*. This Muslim cannot shed the blood of any of their residents, loot any of their possessions or betray them in any shape, form or manner. This is because they only allowed the Muslim entry into their lands and gave him *Amān* on the condition that they would be safe from his treachery and betrayal. This is a matter concerning which there is no difference between scholars.

The simple and clear reason for this prohibition is that to harm the *Kuffār* after accepting their offer of *Amān* and being trusted not to harm them is an act of betrayal and treachery. The Prophet, sallallāu 'alayhi wa sallam, said, **"Every betrayer will have a flag on the Day of Resurrection"**.¹⁴ All the verses of the Qur'ān and *Hadīths* of the Prophet, sallallāu 'alayhi wa sallam, ordering with the fulfillment of contracts and the prohibition of breaking them are applicable to this scenario.

Therefore, what has taken place in recent times in some *Kāfir* countries of bombing, hijacking airplanes and killing by the hands of Muslims who had entered these lands with *Amān* are in reality acts of treachery and betrayal and heinous crimes that Islām strictly prohibits. These crimes are even graver and far more evil if they are attributed to the religion and falsely and incorrectly considered acts of *Jihād*. I will list below briefly a few statements of the scholars that affirm this conclusion:

1. Imām ash-Shāfi'ī said in his book *al-Umm* under the chapter of '*al-Musta'man in Dār ul-Harb*' that, "If a group of Muslims enters *Dār ul-Harb*,

14. Bukhārī

after being granted *Amān* by the *Kuffār*, then the *Kuffār* will be safe and secure from this Muslim group until they depart their land or until the *Amān* period expires. Therefore these Muslims cannot be treacherous or unjust with those *Kuffār*. If the *Kuffār* were to attack them and take some of their women and children prisoners...I do not like treachery and betrayal, but I would prefer if they would first ask the *Kuffār* to rescind and forgo the *Amān* granted them, and then they can fight the *Kuffār* to free their children."

2. Imām ibn Qudāmah said in *al-Mughnī*, "Any Muslim who enters the land of the enemy after being given *Amān* cannot betray them with regards their possessions nor can he deal with them with *Ribā* (usury)." He also said, "As for betraying them, this is impermissible, because they only granted him *Amān* with the condition that he would not betray them, and this is an implicit meaning if not explicit. This is why if any of them enters our land with *Amān* and then betrays us, his *Amān* is null and void. If this is held true, then it is clear that betraying them in such a case is impermissible, because this is an act of betrayal, and betrayal and treachery have no place in our religion. The Prophet, *sallāllāu 'alayhi wa sallam*, said, ***The Muslims fulfill their contracts.***" ^{15 16}

3. Imām ibn Juzay', at the end of the chapter on Jihād from his book *Qawānīn al-Fiqhiyyah* writes, "To clarify the distinction between the *Amān* that one is obliged to observe and fulfill and between trickery and deceit in warfare, which is permissible, we say that *Amān* is what the heart of the *Kāfir* accepts and depends on. As for trickery and deceit during warfare, these are tactics and movements during battle that would lead the enemy to think that you are not attacking them or retreating until you find an opportunity to surprise or trap them."

15. Abu Dāwūd and at-Tirmithi

16. Chapter of Jihād, section: The issue of one who entered the land of the enemy with immunity

Things like ambiguity and allusion, reinforcements and collaboration, causing disunity between them, laying traps for them and to proceed or change during battle all fall under this. It does not include the Muslim pretending that he has embraced their religion or that he has come to advise them, and then, if he finds an opportunity, he attacks them while they are unaware. This in reality would be an act of betrayal and treachery that is impermissible in Islām."

4. Imām as-Sarkhasi said in his explanation of the book *as-Siyar al-Kabir* by Muhammad ibn al-Hasan ash-Shaybānī, "Muhammad said, 'If a group of Muslims approach the first checkpoint of people waging war and claim that they are envoys from the Muslim ruler to their ruler, and they then present the *Kuffār* with a message that may resemble the Muslim ruler's message, or even not produce one at all, and they tricked and defrauded the *Kuffār* as a result of which they were granted entry into that *Dār al-Harb*, then it is not permissible for them to kill any *Harbi* there nor take any of their possessions as long as they are in that land.' "

Imām as-Sarkhasi then said, "This is because if what these Muslims had presented the *Kuffār* with (the false document or message that shows that they are indeed envoys to the *Kāfir* ruler) had not been fake, they would have then attained safety in the lands of the *Kuffār* and the *Kuffār* would have been safe from their betrayal and treachery. This is the ruling of the *Sharī'ah* regarding the envoys of rulers when they enter upon them as we have explained. Mohammad ibn al-Hasan said, 'The same applies if they had shown the *Kuffār* that this was their intent', this is because the *Kuffār* have no means of verifying what is in their hearts in reality.

The ruling is based upon that which the person declares and shows, not on what he may conceal in his heart, and this way one can avoid injustice, harm and treachery. Since the matter of *Amān* is so crucial (since it deals with life and death), any minor indication that may lead to preserving life must be applied. Therefore, if the *Kuffār* grant the Muslims *Amān*

to enter their land, then the Muslims must fulfill their covenant towards them." Similarly this is the case if that which points to seeking security is shown. Imām as-Sarkhasi then said, "The same applies if the Muslims go to the *Kuffār* and claim that they want to conduct business while in reality they seek to enter their land to kill and destroy. This is because if they had indeed gone there to trade, it would not be allowed for them to betray the enemy, so thus is the case if that is what they declare."¹⁷

5. Imām al-Merghāni said in his book *al-Hidāyah*, "If the Muslim enters *Dār al-Harb* as a merchant, which is an example of the Muslim who is a *Musta'man* in *Dār al-Harb*, he cannot harm them with regards to themselves or their possessions. This is because he was granted *Amān* to enter and *Amān* was also taken from him towards the *Kāfir* country that he had entered. Therefore, any harm that he may direct at them after that is in reality betrayal and treachery, and this is impermissible in Islām."¹⁸

The statements of the scholars on this matter are far too numerous to all be listed here so we have only mentioned an example from each school of Islāmic Law. Another proof that further bolsters this view is that the scholars of Islām are in agreement that if a Muslim is taken as a prisoner of war by the *Kuffār* and is then set free on the condition that he does not fight against them, he must fulfill his promise and not betray them. The scholars hold differing opinions on a prisoner freed on the condition that he remains in the land of his captors [the *Kuffār*].

Imām Mālik and Imām Ahmad stated that he cannot flee from their land, whilst Imām ash-Shāfi'ī and Imām Abu Hanīfah allowed such a person to seek to escape. Imām ash-Shāfi'ī in *al-Umm* said, "If the *Kuffār* take a Muslim as a prisoner and they then set him free granting him *Amān*,

17. Section: What constitutes immunity and what does not, for those who enter the land of war and for slaves

18. Kitāb as-Siyar, Bab al-Mustaman

whether they put him in charge of something in their lands or not, then the *Amān* they gave him is also an *Amān* from him towards them, and he can by no means betray or harm them."¹⁹

The above is in the case of the Muslim who is taken prisoner and enters the lands of the *Kuffār* by force. How would it then be with the Muslim who enters the lands of the *Kuffār* without force but through his own accord, with an *Amān* from them to him and with official permission to enter?! Most certainly such a person cannot betray the *Kuffār* in such a case or bring them any harm.

What we've mentioned above and quoted from the scholars concerns Muslims entering *Dār al-Harb* with *Amān*. So how would it be then if the Muslim enters a *Dār al-'Ahd*, not a *Dār al-Harb* with *Amān*?! Most certainly he cannot betray or harm the *Kuffār* in such a case. This is because there would then be two matters that protect them from his harm and treachery: the *'Ahd* between the two countries, and the individual *Amān* that they had granted him to enter.

Therefore, if any Muslim enters the lands of the *Kuffār* with *Amān* from them, or if he enters a *Dār al-'Ahd*, he cannot harm anyone in that country, whether a resident of that country or a visitor from another country. This is because the Muslim enters that land on the condition that *Amān* will be given from the Muslim to everyone there.

19. Issues of Jihad and Jizyah, section: the prisoner; the enemy are secure from him regarding their property

Claims and Rebuttals

Now that we have presented, explained and proven some of the basic rules of the *Sharī'ah* that govern the subject at hand, we will list the false claims and doubts that some raise, and we will then refute them one after the other.

First Claim

"If the ruler does not rule and judge by *all* that Allāh has revealed, any *Amān* or '*Ahd* he grants or makes with the *Kuffār* is null and void. Therefore, if a ruler abandons some of the *Sharī'ah* and instead opts to rule by man-made laws, any *Amān* or any '*Ahd* with the *Kuffār* that he establishes is invalid since he is a disbeliever. If he does so, then such *Kuffār's* blood and possessions are permissible to violate."

Rebuttal

This is their main claim that they rely on and frequently repeat, and it clearly indicates their utter ignorance of the texts of the Qur'ān, the *Sunnah* and the statements of the Imāms of Islām. The following is the rebuttal to this false claim from eleven angles:

1. It is well-known that the *Salaf* (referring to our righteous predecessors who were upon the way of the companions) do not consider the ruler who rules and judges by man-made laws as a *Kāfir* (i.e. a disbeliever) except if he considers this action to be permissible, as Shaykh 'Abdul 'Azīz bin Bāz (*rahimahullāh*) explicitly stated, 'as for man-made laws that are in contradiction to Islamic law then they are impermissible. If a law is sanctioned which abolishes punishment for the fornicator, the thief, the one who drinks alcohol etc, then such a law is invalid.

If the ruler deems it permissible then he has disbelieved because he has deemed permissible that which contradicts the text and the consensus.

Likewise, anyone who deems permissible that which Allah has prohibited; from those things that are unanimously impermissible, then he has disbelieved due to that (belief).²⁰

He also said in a treatise entitled, 'the ruling of one who studies man-made laws or teaches them': 'the one who studies or teaches man-made laws in order to rule by them or to aid others in that, whilst believing in the impermissibility of ruling by other than what Allah has revealed; his desires or the love of wealth being the cause in his doing that, this category of people without doubt are transgressors and rebellious and in them is disbelief, oppression and transgression but it is minor disbelief, minor oppression and minor transgression, they do not leave Islam with that.

This statement is that which is known amongst the people of knowledge and it is the saying of Ibn Abbās, Tawūs, Ata, Mujāhid and a large number of the *Salaf* and the *Khalaf* (contemporary scholars) as al-Hafidh Ibn Kathīr states as does al-Baghawī, al-Qurtubī and other than them. Ibn al-Qayyim mentions the same meaning in the book 'as-Salah', and the shaiikh Abdul-Latif ibn Abdur-Rahman ibn Hasan, may Allah have mercy on him, has a nice treatise on this issue which is printed in the third volume of a collection of treatises (the first letters).²¹

As-Shaikh Abdullah the son of the scholar Muhammad ibn Abdul-Wahab, may Allah have mercy on them both, was asked: Is it allowed to turn to other than the book of Allah for judgment? He replied: 'It is not permissible and the one who believes the permissibility of that has disbelieved. This is from the greatest of evils and it is obligatory upon every Muslim to rebuke the one who does such. A person with the most minimal of knowledge has no doubt in this' (ad-Durar as-Sunniyah 10/252).

20. Majmu' fatawa wa maqalat (7/119)

21. Majmu' fatawa wa maqalat (2/326)

The Shaikh Abdul-Latif ibn Abdur-Rahman Ale as-Shaikh said in answer to a question: 'As for what you have mentioned about the Bedouins concerning the difference between the one who deems permissible to rule by other than what Allah has revealed and the one who does not deem that permissible then this is what is practiced and it is what is referred to by the people of knowledge and uprightness' (ad-Durar as-Sunniyah 1/497).

This is why the scholars always divide ruling by man-made laws into two: *Kufr Akbar* and *Kufr Asghar* (major disbelief and minor disbelief). Ruling is from the issue of obedience such that ruling by other than that which Allah has revealed is from obedience to other than Allah in His disobedience. The scholars divide *Kufr* of obedience into major and minor *Kufr* depending on the accompanying belief held by the individual regarding the one he is obeying; as is explained in works by the people of knowledge. This is in contrast to acts that are pure *Kufr*, such as vowing, slaughtering or prostrating to other than Allāh, where there is only one category; major disbelief i.e. *Kufr Akbar*. The place to establish this fact is other than this treatise.

2. Let us hypothetically agree with them that indeed the one who rules by man-made laws (even without believing in the permissibility of this act) is a disbeliever. However, this still remains a disputed matter among the scholars, just as they differed regarding the one who abandons the prayer, fasting or *Hajj*. Therefore, some noted scholars of this time, such as Bin Bāz and al-Albānī did not consider the disbelief of one who rules by man-made laws unless the ruler believes that it is permissible for him to do so.

On the other hand, others claim that even without such belief such a person has disbelieved. However, the Prophet Mohammad, sallallāu 'alayhi wa sallam, established a prophetic rule that states that rebelling against the ruler — and whatever may result from this action of nullifying

covenants and treaties – is permissible only when there is disbelief about which the Muslims do not disagree. It is what he, sallallāu ‘alayhi wa sallam, described in his saying: “...**except when you see clear Kufr with a clear proof from Allāh**”, meaning a clear proof which is explicit concerning which no scholar differs. If we compel the people to the consequences which result from declaring the ruler a disbeliever, based on what we may *think, feel* or by *preferring* the opinion that he is *Kāfir* over the other opinion, then truly this is something evil and misguided. Also, pronouncing judgement upon the rulers and Imams, in issues of belief and disbelief which are differed over, has far more gravity than pronouncing judgement on an individual from the masses.

3. Let us consider those who rule by man-made laws like the *Khawārij* about whom the scholars differed over whether they were *Kuffār* or not, the apparent meaning of many *Hadīth* is that they were indeed *Kuffār*. Despite this, the scholars accepted the *Amān* they offered to other non-Muslims and even allowed the payment of *Zakāt* to them (for distribution amongst the people) if they were the dominant force. ‘Abdullāh ibn ‘Umar ibn al-Khattāb (*radhy Allāhu ‘anhuma*) said, “*Zakāt* is to be paid (for distribution amongst the people) to whoever dominates and rules.” This is also what Imām Ahmad stated.

The scholars explicitly affirmed the validity of the *Khawārij*’s treaties and covenants with the *Kuffār*, for example, Sahnūn said, ‘The *Amān* granted by the *Khawārij* to the warring fighters (*Ahl al-Harb*) is valid’.²² Muhammad ibn al-Hasan said: ‘The immunity given by the *khawarij* to the warring fighters is permissible just like the immunity given by the people of justice (Muslims)’.²³

22. al-Qarāfi in his *adh-Dhakhirah*

23. *As-Siyar al-Kabīr*, bab an-Nafl min aslab al-Khawarij

This is with respect to the immunity given by an individual from the masses, so what about the general treaty which is granted to the *Kuffār* and cannot be granted except by the ruler?! I do not know of any scholar who stated otherwise and thus nullified the treaties of the *Khawārij* with the warring enemy.

In fact they also affirmed the same (for those who had ruled the *Ummah*) concerning whom there was no doubt about their disbelief, such as the *‘Ubaydiyyīn* and many *Rāfidhi Shī‘ah* dynasties, such as the *Sāmāniyyīn* and the *Buwayhiyyīn*. This is because the peace treaty of a *Kāfir* to another *Kāfir* is valid. One of the scholars of ad-dawah an-Najdiyyah said: ‘the immunity from a *Kāfir* to another *Kāfir* or other than them is valid according to the Book, the Sunnah and reasoning’ (ad-Durar 10/338).

4. If we agree, for arguments sake, that the one who rules by man-made laws is indeed *Kāfir* in an absolute sense and that all the scholars agreed about this, then this still is by no means a valid reason to nullify the *‘Ahd* or *Amān* that he granted to the *Kuffār*. This is because the *Kāfir* is protected with a valid and clear *Amān* or treaty as well as an invalid *Amān* or treaty, which is an ambiguous one. This is to promote the sanctity of blood, to avoid consequences which drive people away from the path of Allah and because the principle in the *Shari‘ah* states that punishments are not established when there is doubt.

The basic rule of the *Shari‘ah* in this case is that the *Kāfir* is protected by any *Amān* or *‘Ahd* that he believes grants him protection. What ‘Umar ibn al-Khattāb (*radhy Allāhu ‘anhū*) stated shows this, “If any of you raises his finger to the sky before a *Kāfir*, and the *Kāfir* then approaches him mistakenly thinking that by this gesture he was granted *Amān*, and the Muslim then kills him, verily I shall kill that Muslim”.²⁴

24. Narrated by Sa‘īd in his Sunan

Imām Ahmad said, "If one gestures (to the *Kāfir*) and he thus thinks that he was granted *Amān*, he is indeed safe".²⁵

Furthermore, Imām ibn Juzay' in his *Qawānīn al-Fiqhiyyah* said, "If the *Kāfir* thought that the Muslim meant the granting of *Amān*, whilst the Muslim in reality did not mean this, then the *Kāfir* cannot be killed".

Shaikh al-Islam said: 'It is known that the obscure or vague immunity is like a real one with regards to the preservation of life'.²⁶ He also said: 'This statement that they have said has given him immunity; at the very least he has a vague immunity. It is not permissible to kill such a person due to his mere *Kufr*, for immunity protects the blood of someone waging war and gives him security with less than this, as is well-known'.²⁷

As-Sarkhasi said: 'that is due to what has been clarified; immunity is something grave and a small amount suffices'.²⁸ Another example of the ambiguous *Amān* by which the blood of the *Kāfir* is protected is one offered to him by someone he thought to be Muslim but turns out to be a *Kāfir*, or from someone he knew was *Kāfir* but he believed was entitled to offer such an '*Ahd* or *Amān*. This is what the scholars and Imāms stated. Imām ibn Wahb in his *Mudawwanah* reported with a chain of narrators to him, that 'Umar ibn al-Khattāb (*radhy Allāhu 'anhū*) sent a letter to his commander, Sa'd bin 'Āmir, while he was laying siege to a Christian city, saying, "If one of the *Kuffār* who are aiding you in your siege granted *Amān* to some of the enemy, then they are safe until you release them at a safe location or if they join your ranks.

25. Ma'awnah of Imām al-Fatūhī in the chapter of jihad and the section on immunity and safety

26. As-Sarīm al-Maslul (294)

27. As-Sarīm al-Maslul (94)

28. Sharh al-Siyar, section: What constitutes immunity and what does not, for those who enter the land of war and slaves

Similarly, if you prohibit anyone from giving *Amān* to any of the enemy and then one did; out of ignorance, forgetfulness or disobedience, then the enemy is safe until you release them at a safe location or if they join your ranks. Do not let the people suffer the consequences of your shortcomings, for you are merely soldiers from the soldiers of Allāh.

Ibn Wahb also said, "The two Imāms al-Layth and al-Awzā'i had stated regarding the Christian who fights alongside the Muslims, 'It is not for the Muslims to grant *Amān* to an idolator but in such a case, he is released at a safe location.' " ²⁹

Furthermore, under the chapter of *Amān* in *al-Umm*, Imām ash-Shāfi'i said, "If the *Amān* was granted to the *Kuffār* by the very young or an insane Muslims, whether they were participating in fighting or not, and similarly if the *Thimmi* grants *Amān* to the *Kuffār*, whether he was participating in fighting or not, then we do not validate or permit this *Amān*. However, if the *Kuffār* think that this *Amān* is valid and thus approach the Muslim army camps, they cannot be harmed with respect to their lives or possessions, and they must be safely returned to where they came from. This is because they would be unable to differentiate exactly who amongst the Muslim soldiers could grant them *Amān* and who could not. Therefore, we dismiss them then we fight them."

Another example of this is if the *Kuffār* approach the Muslims in the wake of an invalid treaty, such as if it was established by other than the ruler, or in-line with their argument, a treaty signed by the ruler who is a disbeliever. In such case, since the *Kuffār* are unaware of the invalidity of the treaty and due to the confusion and ambiguity, their blood is unlawful to be shed. Imām al-Fatūhi said in the book of Jihad: "When the *Kuffār* approach the Muslims during an invalid treaty, such as if it is signed by other

29. Bab Aman al-Marah wa al-'Abd wa as-Sabiy

than the ruler, or for any other reason, thinking that they will be safe, then they are to be returned to where they came from without being harmed".³⁰

These narrations and many others clearly show that the blood of the *Kāfir* cannot be shed if he was granted *Amān* by a *Kāfir* like himself due to the ambiguity despite the fact the one granting the immunity was a disbeliever from the masses. If this is the case when the *Kāfir* granting the *Amān* is a commoner, how then would the case be if the one granting the *Amān* or establishing the *'Ahd* is the Muslim ruler, about which the *Kuffār* had thought that he was indeed Muslim and that his *'Ahd* and *Amān* were valid?!! Thus preserving the blood of the *Kuffār* in this case is even more appropriate.³¹ This is despite the fact that the correct position regarding the ruler who rules by man-made laws is that he is not *Kāfir* unless he believes that doing so is permissible.

30. Al-Ma'ūnah, bab al-hudnah

31. The Hadith scholar Shaikh al-Albaani, may Allah have mercy on him, was asked, as appears in al-Asilah ash-Shamiyah (compiled by Shaikh 'Ali al-Halabi p. 93), some of the youth; from those who are affiliated to groups, legitimise the taking of disbelievers wealth like jack-ing their cars. Thus all of the disbelievers are fighters especially those who spread corruption in the land like tourists. They also deem their blood to be lawful. Are they correct in their view? He replied, may Allah have mercy upon him, by saying: It is not allowed at all, tourists enter with security from the oppressive rulers, thus they fall under a treaty with that (Muahadun). We do not contest the fact that they are disbelievers that spread corruption in the land and the fact that they have occupied our lands. Yet the Muahad is not killed since the disbelievers according to the Jurists are of three types: Dhimmiiyun, Muahadun and Muharibun. As for the Dhimmiiyun then they don't exist anymore, rather they have become citizens, no distinction is made between them and the Muslims! As for those who have a pact or treaty then they do exist due to agreed treaties between them and the Muslim rulers. It is not allowed to betray them by making their blood and wealth lawful due to the saying of the Prophet (sallallāu 'alay-hi wa sallam), "whoever kills a Muahad will not smell the scent of Paradise; even though it's scent is found over the distance covered in forty years". They enter our lands with immunity from the rulers – until he said in his response – Suppose that the ruler was a *Kāfir*; disbelief of the heart; major disbelief – the previous ruling does not change if the tourists have entered with a contract of immunity and security since this would lead to grave problems.

5. The *'Ahd* and *Amān* are usually established by the Muslim ruler for a public benefit and after consultation with scholars and people of authority along with their approval. Therefore, nullifying these treaties by individual Muslims will bring about harm to the Muslims.

6. If we annul the *'Ahd* and *Amān* of the ruler who rules by man-made laws because he is a *Kāfir* and thus violate the blood and possessions of the *Kuffār* who were granted *'Ahd* and *Amān* by him, we must then subsequently annul everything the ruler carried out during his reign, including all marriages, judicial rulings between people, *Zakāt* money that was collected and dispensed, etc. This is because there is no difference between the *'Ahd* he grants to the *Kuffār* and any other treaties and contracts (*'Uqud*,) that are carried out during his reign. The imaginable harm and destruction that will result from this is sufficient in showing the falsehood of such a claim.³²

7. This claim necessitates that the *Kuffār* should be proficient in Islamic law, especially in the matter of ruling by man-made laws, and that they must understand that this renders the ruler as *Kāfir*, and thus any *'Ahd* or *Amān* he establishes with them will be invalid. They must do this in order to never accept any *'Ahd* or *Amān* of a ruler that may later turn out to be invalid, and thus put themselves and their possessions in harms way. The audacity of this claim is plain and clear.

32. Izz Ibn Abdus-Salaam, may Allah have mercy upon him, in *Qawaid al-Ahkam* (1/50): 'Concerning the position of major leadership then the condition of uprightness is one of disagreement, since most of the leaders are sinful and immoral. If we made it a condition, many legitimate acts would be rendered void; from appointing judges, ministers, officials and war chiefs, taking what they take, spending what they give, taking charity; general and specific wealth all fall under their authority. Thus uprightness is not conditional for their legitimate actions due to the great harm that would cause. The loss of these benefits is far worse than the ruler not being upright'. He also said (1/51): 'Chapter concerning the implementation of acts by tyrants and oppressive rulers regarding that which is lawful due to the necessity of the masses: General acts can be implemented without authority as in the case of the acts done by tyrants, for they are implemented whilst without doubt these individuals have no authority. They are implemented and their authority is accepted merely due to the necessity of the masses.'

8. Annulling the *'Ahd* and *Amān* of the ruler who rules by other than what Allah has revealed and shedding the blood of the *Kuffār* will result in driving the people away from Islām and giving it a bad reputation. Such *Kuffār* will be under the impression that they are conducting a valid treaty with a Muslim ruler that will bring them peace and safety. Any killing after that will be considered by them as treachery and betrayal. It is not imaginable that they accept any argument brought forward by those who claim that referring to man-made laws makes one a *Kafir* in an absolutely sense, and that therefore his *'Ahd* and *Amān* are null and void.

9. The *'Ahd* and *Amān* that the ruler grants and establishes with the *Kuffār* are matters that are accepted and supported by the *'Ahlul Halli wal 'Aqd*; those influential people in the society, members of parliament, etc., and even the general masses. Therefore, the ruler did not enforce this matter by himself. Furthermore, those who carry out the *'Ahd* and *Amān*, such as those who grant such *Kuffār* entry visas, are all individual Muslims who accept and affirm such *'Ahd* and *Amān*. How can the blood of such *Kuffār* be violable after all of this?!

10. The claim that the treaties and covenants that the ruler who judges by man-made laws conducts with the *Kuffār* are null and void is a false claim that is not supported by either the Qur'ān, the *Sunnah* or any of the statements from the companions or any Imām of Islām.

11. If we suppose that the one governing the Muslims is a *Kafir* by that which is clearer than the issue of ruling by other than that which Allah has revealed, for instance that he is a Jew, Christian, idol worshipper etc, this does not necessitate the nullification of his covenants and immunities and the lawfulness of the blood of those whom he has given security to or made a treaty with.³³

33. The statement of a scholar from the ad-dawah an-Najdiyyah stating that the immunity from a *Kafir* to another *Kafir* is valid by the book, the *Sunnah* and reasoning has already preceded.

This is because of the fact that one who lives under his rule and authority from the Muslims are viewed as citizens. A citizen must adhere to regulations that a *Muahad* or one given immunity does not have to abide by. To clarify the matter further, the Muslim who enters the land of the disbelievers with immunity from them, is not allowed to infringe on the life or wealth by consensus as has preceded. This immunity that protects their blood and wealth is temporary. Thus for it to be impermissible to harm any of them nor anyone in their lands whilst being a citizen there is more fitting, this is due to the contract of citizenship in their lands. Even if it is not written in words, this contract is still something known and is something in which there is no doubt for anyone who has even a taint of knowledge.

There is no contradiction between this and what is found concerning the permissibility of rebellion against an apostate ruler or a disbelieving one if the Muslims have the ability, as occurs in the *Hadith*: "**except if you see clear disbelief about which you have proof from Allah**". Rebellion against the ruler when he is a disbeliever; after preaching to him and warning him, is considered to be fighting in the path of Allah. This is contrary to killing citizens and those who have a treaty and pact for this is corruption, chaos, betrayal, treachery and not Jihad and dawah. It is killing during a state of peace and it is also the violation of a covenant.

Second Claim

"We were forced to be parties to these peace treaties and anyone who is forced to sign and accept a treaty is not bound by its terms."

Rebuttal

The response to both parts of this claim is that they are false. Firstly, it is incorrect to claim that we were forced. In reality, these *Kuffar* came based on the request made to them by the Islamic states and with their consent. The rulers of these Islamic states were forced to resort to this by the situ-

ation at hand, not the *Kuffār* themselves. Secondly, the rule that these claimants have invented that the treaty of one who is forced to accept it is automatically null and void, is plain and simply wrong for many reasons:

1. As far as I know, no scholar has held such an opinion.
2. Peace treaties are usually established at times when the Muslims are weak and unable to fend off their enemies. In reality, the majority of scholars have stated that such treaties can only be established when the Muslims are in a state of weakness, and have ruled that such treaties should be terminated if the Muslims gain enough strength, unless keeping these treaties would bring them greater benefits. The *Shari'ah* takes this further, by allowing the Muslims to pay money to the *Kuffār* so as to guarantee that they will not be hostile and attack them. This is proven by the desire of the Prophet, *sallallāu 'alayhi wa sallam*, to pay the *Kāfir* tribe of *Ghatafān* half the fruits of *Madīnah* to return home. This occurred during the Battle of *Ahzāb* and is what the majority of scholars have stated.
3. It cannot be imagined that Muslims would be forced to sign a treaty with their enemy except when they are in a state of weakness and inability. If one cannot kill a *Mu'āhad* during times of strength and ability, how can one then assume that this is permissible when Muslims are weak and dominated. If the Muslims harm the *Kuffār* at times of weakness then this may very well lead to their utter destruction.

Third Claim

"The Prophet(*sallallāu 'alayhi wa sallam*) commanded that we expel the Jews and Christians from the 'Arabian Peninsula' (*'al-Jazīratul 'Arab*'), and killing them is the means by which we can expel them."

Rebuttal

To refute this claim, we say the following:

1. The prohibition that is mentioned in the *Hadīth* of the Prophet, sallāllāu 'alayhi wa sallam, is for the *Kuffār* to permanently settle in the area i.e. the Arabian Peninsula, not their temporary entry with an 'Ahd or Amān. Imām an-Nawawī in *al-Minhāj*, said, "All *Kuffār* must be prevented from permanently settling in Hijāz (a specific region in Saudi Arabia)".³⁴

Al-Qadi Abu Ya'la in *al-Ahkam as-Sultaniyah* said: 'What is other than the sacred sanctuary of it – i.e. the *Hijaz* – has four rulings specifically attached to it which do not apply to other lands: the first being that no polytheist; whether a *Thimmi* or a *Mu'āhad*, may settle therein, Abu Hanifah allowed it.³⁵ *Ibn Qudamah* in *al-Mughni* said: 'It is not permissible for any of them to reside in the *Hijaz*'.³⁶ This is something agreed upon by the scholars.

2. There is no dispute amongst the scholars on the permissibility of the *Thimmi*, *Mu'āhad* or *Musta'man* temporarily entering the Hijāz, which is the heart of the Arabian Peninsula. Their only dispute regarding this matter was how long they would be allowed to stay. Some scholars have also ruled that these categories of *Kuffār* can even be allowed entry to the heart, core and most sacred part of the Hijāz, and that is the *Haram* of Makkah. Imām Abu Hanifah allowed this, whilst Mālik, Shāfi'ī and Ahmad, along with the majority of scholars, disallowed it.

After all this, how can one claim that such *Kuffār*, who do not intend to permanently settle in the Hijāz, must be denied entry into it and even be killed to drive them out of it.

3. The scholars have always differed on the exact definition of what the 'Arabian Peninsula' actually is. Some scholars, such as Mālik and Abu

34. Kitab al-Jizyah

35. The Fourteenth chapter, section: the definition of the Hijaz

36. Kitab al-Jizyah, masalah naqd al-'Ahd

Hanīfah, stated that it is from the Arabian Gulf and the Tigris River to the Red Sea and the Arabian Sea. Others, such as Ahmad, ash-Shāfi'ī and Ibn Taymiyyah, said that it is only from the Hijāz to Tabūk (the North West of Saudi Arabia). These scholars used as proof of their position the action of 'Umar ibn al-Khattāb (*radhy Allāhu 'anhū*) when he did not expel the Jews and Christians from Yemen and Taymā' (an area in Tabūk).

According to this position we conclude that Kuwait, al-Ahsā' (an area in Saudi Arabia) and Najd are not parts of the Arabian Peninsula.

4. If we are to assume, for arguments sake, that the Jews and Christians cannot enter any part of the Arabian Peninsula under any circumstances, then expelling them from it can never be by killing them after they were granted safe entry. Rather they should be expelled in the manner 'Umar expelled them.

5. Also, they cannot be expelled by individual Muslims but only by the ruler and his authorized agents, similar to the case of legal punishments, Jihad and the like. The rights of the ruler are not allowed to be transgressed against in such a manner.

Fourth Claim

They rebut what we have stated in the third claim; the impermissibility of Muslims acting treacherously towards the *Kuffār* if they enter the Muslim lands with immunity, by justifying what has happened in some of the non-Muslim lands with regards hijacking of planes and the destruction of buildings by stating that this conforms to one of two legitimate positions:

Firstly, from *at-Tabyit* and *at-Tatarrus*

Secondly, these are from the leaders of *Kufr* whose blood is not secured by a treaty or immunity due to the saying of Allah, Most High: **(then fight the leaders of disbelief for surely they have no immunity – so that they**

desist)³⁷ as occurred to Ka'b ibn al-Ashraf the Jew when Muhammad ibn Maslamah declared immunity to him and then killed him.

The response to this claim is as follows:

As for the view that these actions are from *at-Tabyit* and *at-Tatarrus* then the refutation is as follows:

1. *at-Tabyit* – attacking the disbelievers at night without warning – and striking the disbelievers during *at-Tatarrus* – where the *Kuffar* are using Muslims or those who are not killed like women and children as a shield – is only when waging war against disbelieving fighters where there is no treaty and immunity between us and them and where the message (of Islam) has reached them. This is what the Prophet, sallallāu 'alayhi wa sallam, did with bani Mustalaq when they were invading.

The Prophet, sallallāu 'alayhi wa sallam, was asked about the inhabitants of polytheists who were attacked and thus some of their women and children were killed, he replied: **'they are from them'**.³⁸

As for if they are *Mu'ahadun* or *Mustamanun* then it is not allowed to attack them when they are using those who should not be killed during war as a shield. Shaykh al-Islam ibn Taymiyah said: 'As for attacking, then there is no statement or action by which they have been given security and immunity nor believed that this had occurred'.³⁹

So if a person says, America has betrayed its pact by killing Muslims in many places thus attacking it is permissible, the response is as follows:

37. At-Tawbah: 12

38. Agreed upon

39. As-Sarim al-Maslul (94)

If we accept, for arguments sake, that America have broken their pact by killing some of the Muslims who are not under our authority even though this is not true⁴⁰ – if they have broken their general contract which is a treaty and pact, the specific covenant; immunity by which one enters their land, has not been broken.

Similar to the case where a fighter from them enters our land with immunity during a war between us and his people, he has safety due to the immunity he has been given whereas his people are waged war against. Likewise is the Muslim if he enters their lands with immunity from them. He is not allowed to attack them nor raid them as long as they do not break this specific immunity by raising a weapon against him or something similar.

Thus it is imperative that we differentiate between the general immunity which is a pact and treaty and the specific immunity which is the contract of security given to an individual. The nullification of one of these does not necessitate the nullification of the other. If the general is nullified; the treaty, the specific is not invalidated; the individual security, the reverse is also true.

Therefore the security of the *Mustaman* from amongst them, if he enters our land and then invalidates it by cursing us or our religion, this does not necessitate the nullification of the general treaty which is between us and his people if one exists. Nor does the contract of the *Mustaman* become invalid; if he enters our land, with the nullification of the treaty between us and his people due to our war with them.

2. The scholars differ over attacking the *Kuffar* if they are shielding themselves with their women and children. Some scholars viewed it impermis

40. Ar-Rad al-'Ilmi 'ala nashrat la 'ahd wa la thimma wa la aman, the fifth issue, point 2.

sible in such a case except due to necessity such as where the fact of not killing them would mean the defeat of the Muslims or the destruction of the core Islamic populous, this is the *madhhab* of Mālik, and Shāfi'ī. Other scholars allowed attacking them in this case in an absolute sense; whether the war was intense or not, as long as the intent was to kill their soldiers and not their women and children.

3. Attacking the *Kuffar* by *Tabyit* and *Tatarrus* is only done by the order of the leader or his deputy over the army and not by whoever wills from the populous because this is taking the right of the ruler. *Al-Fatūhi* said: in *al-Muntaha* under the chapter of 'war without the permission of the ruler': 'it is forbidden to wage war without the permission of the ruler'.

This is the view of the *Salaf* without exception. *Al-Fatūhi* said in *Ma'ūnah*: '(if a people enter) and they have power or even if they do not; whether it be an individual or a slave, if they enter without the permission of the leader and then pillage the area, the booty they take is viewed as war booty gained without fighting and is used as such according to the correct opinion. Since those who did this action are transgressors due to their infringing upon the rights of the ruler in taking booty, it is fitting that they be forbidden from the booty just as the situation of the inheritor who kills the one who he will inherit from.

The scholars Abdullah ibn Abdul-Latif Ali ash-Shaikh, Hasan ibn Husayn Ali ash-Shaikh, Sa'd ibn Hamd ibn 'Atiq and Muhammad ibn Abdul-Latif Ale ash-Shaikh in a treatise to Imam Abdur-Rahman ibn Faisal: 'we have noticed something that which will cause disorder for the people of Islam and disunity in their nation, the independency and high-handedness of individuals without their ruler.

They believe that it is due to their intent of Jihad yet they have not understood the reality of Jihad, making a pact with the enemy, granting protection for the masses and establishing punishments is specific to the

leader and is allocated to him. It is not for anyone from the populous to delve into such matters except with authority from him' (ad-Durar 9/94).

A person should not say that they did such only due to authority from a Muslim leader whom they obey, who governs a different nation than the one in whose name they entered and the passport of which they entered upon. This is because, if a Muslim who enters lands of the *Kuffar* on the pretext that he is from a particular country and with the passport of that country, whilst in reality he is under the rule of a different country which if the *Kuffar* knew of his affiliation to, they would not have allowed him entry nor would they have given him immunity, such an action is viewed as betrayal, treachery and lying.

4. If we were to concede that the reasoning behind what has happened is *Tabyit* and *Tatarrus*, then even this does not justify these actions in the current climate. This is due to the negative consequences that will result which are greater in impact than any benefit from such actions. Examples of this being, the overpowering of Muslims by the *Kuffar* and propelling their armies into the Muslim lands, the taking of such actions as a justification to attack everything that is Islamic from propagation, charity work etc, or even using such acts as a justification to compel societies to adopt western thought and to change curricula in order to suit *Kuffar* objectives.

As for the second conception – the permissibility of entering their lands with security and then to inflict death upon them because they are leaders of disbelief concerning whom Allah stated: **(then fight the leaders of disbelief for surely they have no immunity – so that they desist)** [at-Tawbah: 12], using the killing by Muhammad Ibn Maslamah and his companions, may Allah be pleased with them, of ka'b Ibn al-Ashraf the Jew after they had given him immunity as proof, the rebuttal of this is as follows:

The leaders of disbelief that Allah has informed about in this verse, those that have no security are of two categories:

a) Those who have broken a pact after it had been made. As for their killing then it is permissible without warning. This is what *Quraysh* did with the Prophet, sallallāu 'alayhi wa sallam, when they broke their treaty by aiding *Bani Bakr* against *Khuza'ah*, therefore the Prophet, sallallāu 'alayhi wa sallam, attacked them without any warning. Do you not see the condition that Allah mentioned and stipulated in the verse: **(But if they violate their oaths after their covenant)** [at-Tawbah: 12].

According to this saying then everyone who breaks his covenant from the *Kuffar* is a leader of disbelief, thus it is permissible to do *Tabyit* of him and attack without warning. If the pact is an individual one which is actually immunity, then it is not invalidated except by that which specifically nullifies it. This is because the nullification of the greater treaty does not necessitate the rendering void of the immunity given to the individual as I have explained earlier.

Thus those who have entered the *Kuffar* lands with security, the *Kuffar* therein are not leaders of disbelief with respect to them except if they betray this specific immunity; not the greater treaty. So how is their killing permissible because they are leaders of *Kufr* when they have not broken the specific immunity that they have given the individual?!

b) Those who have shown audacity towards Islam by which their blood becomes permissible under all circumstances, such that no treaty, pact or immunity protects them. Examples of such are those who slander the Prophet, sallallāu 'alayhi wa sallam, and defame his person such as *ka'b Ibn al-Ashraf* since he attacked the Prophet, sallallāu 'alayhi wa sallam, in some poetry, thus the Prophet, sallallāu 'alayhi wa sallam, said: **"Who (will kill) ka'b Ibn al-Ashraf for he has insulted Allah and His Messenger"**

Muhammad Ibn Maslamah stood up after seeking permission from the Prophet, sallallāu 'alayhi wa sallam, and being granted it, the incident

continues and in it Muhammad Ibn Maslamah, may Allah be pleased with him, declared immunity to Ka'b Ibn al-Ashraf then he killed him. This incident is well known.

Shaykh al-Islam said in accounting for Muhammad Ibn Maslamah killing Ka'b Ibn al-Ashraf after granting him immunity: 'It is said: this statement that they said gave him immunity, the least that can be said is that he had an ambiguous immunity and the like of such a person cannot be killed due to his mere disbelief. Immunity protects the blood of a fighter and he becomes secure with less than this as is known. The only reason they killed him was due to his insulting and slandering of Allah and His Messenger, the one whose blood becomes permissible due to this then it is not protected with immunity and a treaty...

This is because his killing is a punishment from the legal punishments and is not due to the mere fact he is a *Kafir* or fighter... It is established that insulting Allah and His Messenger with slurs and the like leaves no room for such blood to be protected with immunity, thus for it not to be safe due to an indefinite *thimma* or treaty is only more fitting'.⁴¹

Therefore the Prophet, sallallāu 'alayhi wa sallam, did not order with the killing of any of the *Kuffar* that had a treaty with him from the Jews or *Quraysh* when they had made a pact, even though they were rampantly plotting against Islam and its people. The only people whose killing was authorized were those who had insulted Allah and His Messenger, thus their blood was spilt and was not protected by any treaty or immunity. Shaykh al-Islam said: 'This was the way of the Messenger of Allah, sallallāu 'alayhi wa sallam,, he used to shed the blood of one who slandered Allah and His Messenger and was involved in the defamation of Islam even if he refrained from other than them'.⁴²

41. As-Sarim al-Maslul, pg 94.

42. As-Sarim al-Maslul, pg. 19.

This is why Shaykh al-Islam Ibn Taymiyah, may Allah have mercy upon him, chose the view that leaders of *Kufr* in the verse are those who are involved in the defamation of Islam and those who slander the Messenger of Allah, not those who break their treaties alone without defamation. This is the alternative opinion regarding the verse. Thus Shaykh al-Islam said: 'The leader of *Kufr* is the caller who is followed in his call. He became a leader of *Kufr* due to his defamation (of Islam), since mere breaking of a treaty does not obligate this whilst it is fitting. This is because defamation of Islam is to ridicule or slander it or to call to other than it and this is the role of the leader. Thus it has been established that every defamer is a leader of *Kufr*'.⁴³

The difference between the first category; the leaders of *Kufr* who had broken their treaty without defamation of Islam, and the second category; those who are involved in the defamation of Islam, is that if the first category don't do anything other than betray their covenant then it is allowed for them to be granted immunity and a treaty. As for those who are involved in the defamation of Islam then to fight them is incumbent and their blood is not protected by treaty, immunity or *thimma*.

Thus it is known that the leaders of *Kufr* that we have been ordered to fight, if they have broken their treaty without defaming Islam then these are only fought without warning on the condition that no new treaty has been made after the previous one was broken. As for those who have insulted Islam, this being the appropriate characteristic (which is particular to them) as Shaykh al-Islam said, the blood of this type of people cannot be protected by a treaty or immunity.

Regarding the first category, namely those who have broken their treaty without defamation of Islam, those who enter the lands of the *Kuffar* with

43. As-Sarim al-Maslul, pg. 22.

immunity then steal and pillage, after the *Kuffar* have broken their covenant – by killing some of the Muslims as they claim – there is still something that secures the blood of the *Kuffar* which is the Muslims security which they have given to the *Kuffar* themselves by entering their land. It is a new treaty which renews the preservation of blood after the treaty that was broken, thus it is not permissible for them to behave treacherously towards the *Kuffar*.

As for the second category; those who insult the religion, then those *Kuffar* who have been betrayed in their lands have not; as far as we know, insulted Islam or slandered and defamed the Messenger of Allah, sallallāu 'alayhi wa sallam,. Rather what they are doing and what they have been doing is what the polytheists of *Quraysh* were doing such as waging war against the Muslims and aiding the enemies of Allah from the Jews and others. This is not the defamation due to which no treaty or immunity is of any worth. *Quraysh* used to wage war against the Prophet, sallallāu 'alayhi wa sallam,, prevent people from the path of Allah and incite others to do this, gather armies and fight the Prophet, sallallāu 'alayhi wa sallam, etc, yet with all of that the Prophet, sallallāu 'alayhi wa sallam, made treaties with them and honoured those treaties and thus spared their blood due to them.

An example of this is the treaty of Hudaibiyah, Abu Sufiyan entered al-Madinah after the treaty and the Prophet, sallallāu 'alayhi wa sallam, did not attack him even though, before embracing Islam, he was from the most zealous of people regarding inciting to waging war against the Prophet, sallallāu 'alayhi wa sallam, and preventing people from the path of Allah. The Prophet, sallallāu 'alayhi wa sallam, only sanctioned spilling the blood of those who insulted and slandered him, thus their blood was not protected by any treaty, immunity or thimma.

2. If we suppose that the leaders of the *Kuffar* are defamers of Islam thus they are 'leaders of *Kufr*', this then only makes their blood permissible

specifically, not being protected by any treaty or immunity, and not the blood of other than them; those who have not insulted Islam nor slandered the Prophet, sallallāu 'alayhi wa sallam. This is shown by the fact that the Prophet, sallallāu 'alayhi wa sallam, did not permit spilling the blood of the *Kuffar* who had a treaty, except for those about whom it had been proven specifically that they had insulted and slandered the religion. The exception did not apply to other *Kuffar* amongst them. Thus we find those whose blood was split due to this are limited in number, like Ka'b Ibn al-Ashraf, Ibn Ubay al-Haqiq and the slave girl, and he, sallallāu 'alayhi wa sallam, did not do such with the other Jews and idolators.

Shaykh al-Islam said: 'the leader of *Kufr* is the caller to it who is followed'.⁴⁴ As for a person who is from the general masses of the *Kuffar* then his blood is protected by the immunity by which the Muslim entered their lands. The destruction and killing that has happened in the lands of the *Kuffar* afflicted not the leaders of the *Kuffar* but rather the general masses. It is like supposing the companions, may Allah be pleased with them, killed some Jews that had not insulted Islam due to the slander of Ka'b Ibn al-Ashraf, and this never happened. Rather only those who slandered the religion were killed and none apart from them from those who were covered by a treaty.

3. If we say, for arguments sake, that such actions are permissible then it is as we have stated, that they can only be done with the permission of the leader and his right cannot be taken and he cannot be betrayed in this regard.

4. The negative consequences of conceding to the permissibility of such (actions) are so great that they outweigh any benefits, and this is what has actually occurred.

44. As-Sarim al-Maslul, pg. 22

Conclusion

These are the four basic claims to which such misguided people cling. They have other claims and doubts, and I have responded to them in a treatise entitled 'ar-Rad al-'Ilmi 'ala nashrat la 'Ahd wa la thimma wa la aman ya 'ulama as-Sultan'. In conclusion we ask Allāh that He leads us all to that which is correct and righteous, to gather the Muslims together and unite them upon the truth and guidance, and may the peace and blessings of Allāh be upon our Prophet Muhammad (SAW) and his family.⁴⁵

45. The above points and rebuttals were presented to the noble Shaykh Sālih ibn Ghānim as-Sadīn in my house in Kuwait when I was honoured with the opportunity to host him, he approved them, and all praise is due to Allāh.

Islam and the Sanctity of Human Life

An analysis of contemporary deviant ideologies

By Faisal ibn Qazzaz al-Jasim

Edited translation by Abu Eesa Niamatullah

MANY MISGUIDED CALLS have been circulating in recent times calling for the killing of non-Muslims (Kuffār) wherever they are to be found, claiming that this is the Jihād described by the Prophet ﷺ in an authentic Hadith as being the "uppermost and highest aspect of Islām".

What Islām requires from us is to judge and weigh any claim according to the Islamic Shari'ah (law), using the Qur'an and the authentic Sunnah as understood by our righteous predecessors. Moreover, one must bear in mind an important rule of the Shari'ah that if one must choose between two alternatives, he must always choose the one that will bring the greatest benefit or cause the least harm. In addition any evaluation must be objectively conducted free from emotion.

Those who call to this particular type of Jihād claim that it will help Muslims and Islām to regain its eminence. When one thinks about our present situation, this claim could not be further from the truth. Indeed much of our present day suffering emanates from such logic.

Sahl bin Hanīf (radhy Allāhu 'anhū) said, "O people! Always doubt your opinions; for verily, during the incident of Abu Jandal, had I had the ability to disobey the Prophet ﷺ, I would have done so. Similarly, 'Umar ibn al-Khattāb (radhy Allāhu 'anhū) said, "O people! Do not rely on your opinions in matters of religion. I once almost disobeyed the Prophet ﷺ and followed my own opinion; that was during the incident of Abu Jandal. This incident occurred when the Muslims had a treaty with the Quraysh (the chief tribe of Makkah) and one of its clauses being that any Muslim who escaped from Makkah and reached Madinah be returned to Makkah. Abu Jandal was among those who were able to escape, and the Prophet ﷺ abided by the terms of the treaty returned him to the Kuffār.

It is intended that this essay will hopefully help to better grasp the correct understanding of the scholars of Islām concerning a few of the many rulings of Jihād that have caused so much tribulation in recent times.